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October 19, 1981

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RE: United States v. Reilly Tar & Chemical Corporation, et al.
File No. 7-80-469

Gentlemen:

Enclosed and served upon each of you by United States mail is Response of the City of Hopkins in Opposition to the Motion by Reilly Tar & Chemical Corporation to Dismiss the Complaints in Intervention.

Very truly yours,

Joseph C. Vesely
Joseph C. Vesely

JCV:dks

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

United States of America,
Plaintiff,

and

State of Minnesota, by its
Attorney General Warren
Spannaus, its Department of
Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corp.;
Housing and Redevelopment
Authority of St. Louis Park;
Oak Park Village Associates;
Rustic Oaks Condominium, Inc.;
and Philips Investment Co.,

Defendants,

and

City of St. Louis Park,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical
Corporation,

Defendant,

and

City of Hopkins,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical
Corporation,

Defendant.

File No. 4-80-469

RESPONSE OF THE CITY OF
HOPKINS IN OPPOSITION TO
THE MOTION BY REILLY TAR &
CHEMICAL CORPORATION TO DISMISS
THE COMPLAINTS IN INTERVENTION

The City of Hopkins, which is one of the Plaintiff-Intervenors in the above matter, which City has suffered and is suffering extensive damages by reason of certain pollution of underground waters caused by Reilly Tar & Chemical Corporation or its predecessor, hereby joins the Plaintiffs and the Plaintiff-Intervenors in their responses to said Motion.

The claims of the City of Hopkins are based upon 42 U.S.C. §6973 and the

and the Federal Common Law. Two requests for Jurisdiction by the Court are:

A. The Defendant, Reilly Tar & Chemical Corporation, was and is incorporated under the laws of the State of Indiana, and its principal office is located in that State. The City of Hopkins and St. Louis Park are, of course, Municipalities of the State of Minnesota. The course of action by the City of Hopkins, like that of the City of St. Louis Park, is only against the Defendant Reilly Tar & Chemical Corporation, and diversity of citizenship as to the Cities and the said Defendant is obvious and the case properly within the Jurisdiction of the above Court.

"It is well settled that for the purposes of diversity of citizenship, political subdivisions are citizens of their respective States." (Bullard vs. City of Cisco, 290 US 179, 78 L Ed 254, 54 S Ct 177, 93 ALR 141;) (See Illinois vs. City of Milwaukee 406 US 91.)

B. More than \$10,000.00 is involved and prayed for by the City of Hopkins.

(Title 28 USC § 1331 (a) provides that "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

(406 US 99) "The question is whether pollution of interstate or navigable waters creates actions arising under the "laws" of the United States within the meaning of § 1331 (a). We hold that it does; and we also hold that § 1331 (a) includes suits brought by a State." (See Illinois vs. City of Milwaukee 406 US 91.) (Also See Reeves vs. City of Jackson 532 F 2nd 491)

The above action was commenced by the United States of America as Plaintiff and by the State of Minnesota as Plaintiff-Intervenor.

Later, under separate proceedings, the Cities of St. Louis Park and Hopkins, in whose territories the damage occurred and is taking place, were allowed by Order of the above Court to intervene as additional parties as Plaintiff ONLY for the purpose of their respective damage causes of action against the Defendant, Reilly Tar & Chemical Corporation.

At one time there were some cases and disputes with reference to the ability of the Federal Courts to entertain such joint actions, but under the Federal Rules of Civil Procedure:

"the impulse is toward entertaining the broadest possible scope of actions consistent with fairness to the parties; joinder of claims parties and remedies

is strongly encouraged." (United Mine Workers vs. Gibbs 383 US 715)

"Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim (arising under "the" Constitution, the Laws of the United States, and Treaties made, or which shall be made; under their Authority . . . ,) US Const. Art III, § 2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional "case." The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. (Levering & Garrigues Co. vs. Morrin, 289 US 103, 77L ed 1062, 53 S Ct 549.) The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues there is power in federal courts to hear the whole."

"That power need not be exercised in every case in which it is found to exist. It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants." (United Mine Workers vs. Gibbs)

The Cities of Hopkins and St. Louis Park will desperately need the scientific and laboratory evidence and tests of the waters and grounds involved in their respective territories and water wells, which tests and related evidence will of necessity be introduced into evidence by the United States and the State of Minnesota in the above action. These Cities are not able to command and pay for such exhaustive, scientific and necessary evidence without the help of other governmental Plaintiffs.

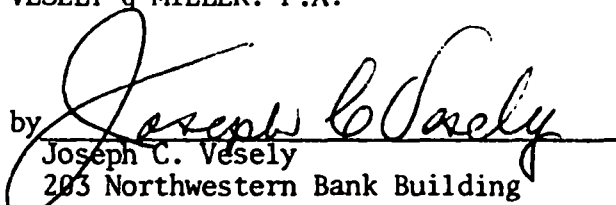
Therefore, the City of Hopkins respectfully joins the City of St. Louis Park and requests that the Motion to Dismiss by Reilly Tar & Chemical Corporation Confirmation be denied.

Dated: October/9, 1981

Respectfully submitted,

VESELY & MILLER. P.A.

by


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response of the City of Hopkins in Opposition to the Motion by Reilly Tar & Chemical Corporation to Dismiss the Complaints in Intervention was served by mail, postage prepaid, upon the following attorneys of record this 19th day of October, 1981.

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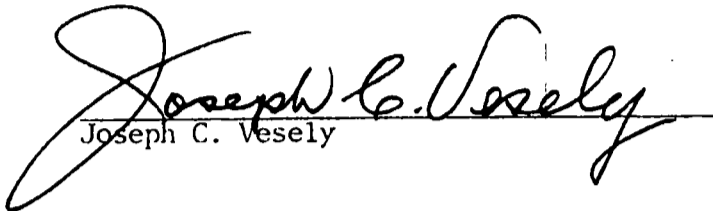
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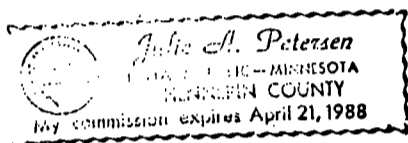
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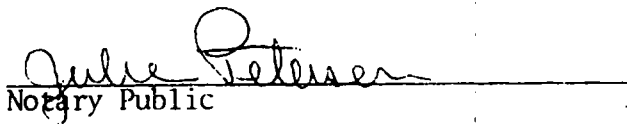
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Attorney for Plaintiff City of St. Louis Park


Joseph C. Vesely

Subscribed and sworn to before me this 19th day of October, 1981.




Notary Public